

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
BIG DRY CREEK - BASIN (40D)
PRELIMINARY DECREE

CLAIMANTS: Everett A. Kountz; Linda J. Kountz; Shane
P. Kountz

CASE 40D-0255-R-2023
40D 169324-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 40D 169324-00 was decreed with DNRC issue remarks. No objections, counter objections, or notices of intent to appear were filed. This claim is consolidated into Water Court Case 40D-0255-R-2023.

FINDINGS OF FACT

1. Claim 40D 169324-00 received the following issue remark:
AN AMENDMENT WAS SUBMITTED ON 7/22/2019 REQUESTING TO AMEND THE RESERVOIR RECORD. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.
2. Upon inspection of the claim file for claim 40D 169324-00, a reservoir questionnaire states, "There are 2 dams on Kerr Coulee used for stock water. Acre feet is approx. 200."
3. The current abstract for this claim lists one point of diversion dam in the NWNWSE Sec. 21, Twp. 19N, Rge. 42E.
4. The map attached to the statement and reservoir questionnaire has the point of diversion in the NWNWSE circled as well as an additional dam circled in the SWNENE Sec. 21, Twp. 19N, Rge. 42E.
5. The map is dated 1973 and thus shows historical usage.
6. The reservoir questionnaire also states the surface area of the reservoir is 5 acres rather than the DNRC estimate of 1.72 acres.
7. The current volume for this claim is listed as 300 acre-feet, this shall be reduced to 200 acre-feet pursuant to Claimant's request.
8. The claim did not receive objections or notices of intent to appear. The remaining remarks are notice-type only. They have served their purpose and can be removed from the claim.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be

contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhardtmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. The evidence entered into the record is sufficient to resolve the issue remarks on this claim and support making the corrections outlined above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

A Post Decree Abstracts of Water Right Claim is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Everett A. Kountz
15 Ragweed Circle
Joliet, MT 59041-9487

Shane P. Kountz
Linda J. Kountz
377 Van Norman Rd
Jordan, MT 59337-9641

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 169324-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

LINDA J KOUNTZ
377 VAN NORMAN RD
JORDAN, MT 59337 9641

EVERETT A KOUNTZ
15 RAGWEED CIRCLE
JOLIET, MT 59041 9487

SHANE P KOUNTZ
377 VAN NORMAN RD
JORDAN, MT 59337 9641

Priority Date: SEPTEMBER 22, 1932

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 200.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 135.00

Source Name: KERR COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSE	21	19N	42E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSE	21	19N	42E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 5.00 ACRES

Capacity: 10.00 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	115.00		SW	22	19N	42E	GARFIELD
2	20.00		S2NW	22	19N	42E	GARFIELD
Total:		135.00					